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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 846/91

Date of decision: 21.02.1992.

Shri Dushyant Giri

...Applicant

Vs.

Lt. Governor, Delhi & Others

...Respondents

For the Applicant

...Shri Daya Kishan,  
Counsel

For the Respondents

...Shri M.K. Sharma,  
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. S. GURUSANKARAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? NO
2. To be referred to the Reporters or not? *yes*

JUDGMENT

(of the Bench delivered by Hon'ble Shri S. Gurusankaran, Administrative Member)

The services of the applicant, while working as a temporary Constable in the Delhi Police, was terminated under sub-rule (1) of Rule 5 of the CCS(Temporary Service) Rules, 1965 (T.S. Rules for short) vide orders dated 11.6.1990 (Annexure 'A') by 3rd Respondent. The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the orders

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of the Disciplinary Authority dated 11.6.1990 (Annexure 'A') and the orders of the Appellate Authority dated 12.10.1990 (Annexure 'E') and awarding the cost of the application.

2. The case of the applicant is that he was appointed as a temporary Constable in Delhi Police on 1.11.1989. He was sanctioned one day's casual leave on 8.5.1990, but could not report for duty on 9.5.1990 due to his falling sick. He got himself treated at M.C.D. Hindu Rao Hospital, Delhi and joined duty after 13 day's absence on 23.5.1990. The applicant has stated that he submitted his statement and medical certificates (Annexures 'B' and 'C'). He has alleged that instead of sanctioning him leave or calling for his explanation for the absence, he was illegally removed from service under the garb of Rule 5(1) of T.S. Rules. The applicant has pointed out that, if necessary, the respondents should have sent him for a second medical examination as per rules and if the circumstances warranted they <sup>should</sup> have ordered a regular departmental enquiry. He has submitted that the alleged misconduct of unauthorised absence has been the very foundation of the order of removal from service. He has also alleged that in the cases of some other Constables, such absences have been regularised.

3. The respondents have filed reply resisting the claims of the applicant. They have stated that the applicant

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did not report back for training on 10.5.1990, but also did not send any information about his whereabouts till he reported back on 23.5.1990. They have mentioned that on 27.5.1990, the applicant again remained absent for 4 hours 5 minutes without prior intimation or permission. It is their case that the applicant has been a habitual absentee and did not show responsibility towards his official duties. In support of this statement, they have indicated 3 other instances on 15.11.1989, 10.1.1990 and 12.4.1990. In the first case, the applicant was verbally warned; in the second case, 2 days were treated as leave without pay and in the third case 5 days <sup>was imposed.</sup> Punishment Drill (P.D.). They have stressed the fact that the applicant is a freshly recruited member of the force and such remissness towards discipline is highly unwarranted and intolerable. Hence, the competent authority had come to the conclusion that the applicant is not a fit person to be continued as a member of the police force and his services were terminated validly under Rule 5 of the T.S. Rules. They have also alleged that the applicant did not submit any medical certificates on his reporting back to duty and hence the question of obtaining a second medical opinion did not arise. The 3rd respondent also gave the applicant a personal hearing

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on 8.6.1990, but was not satisfied with his explanation. The respondents have stressed the fact that the cases of absence of Constables are considered on the merits of each case and no general orders can be passed in all these cases.

4. Since the pleadings are complete, we have heard the counsel for both parties and the application is being decided at the admission stage itself with the consent of both parties. The short question involved is whether repeated acts of indiscipline during the training period can form the basis for coming to the conclusion that a member of a disciplined force like the Delhi Police, who does not improve his behaviour inspite of warnings, is not a fit person to be continued in the service and his services terminated under an order simpliciter.

5. The counsel for the applicant strenuously argued that the applicant's service should not have been terminated without having given him an opportunity through departmental proceedings. He has also referred to the judgments of the Tribunal in the cases of Rajiv Kumar Vs. Delhi Administration and Others (OA No.338/90 decided on 9.8.1990), Naresh Kumar Vs. U.O.I. & Others (OA No.2083/88 decided on 9.1.1991) and Satyavir Singh Vs. U.O.I. & Others (OA No. 1748/88 decided on 31.12.1990). We have gone through the judgments in these cases and they are not on all fours with the present case. In Rajiv Kumar's case (Supra), the

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applicant had completed his training period and had been given regular posting. In Naresh Kumar's case (Supra), there was a specific allegation of a misconduct. In Satyavir Singh's case (Supra), the applicant had served the Army for about 4 years and on being discharged on medical grounds had been appointed in Delhi Police and served for over 6 years. In the present case, the applicant had hardly put in 7 months service and was still undergoing training. The facts about his overstaying his leave on 3 earlier occasions and not intimating the office about his sickness during the period 9.5.1990 to 22.5.1990 are not disputed. The absence on 27.5.1990 for 4 hours 5 minutes has only been disputed. In view of this, we are of the opinion that the competent authority coming to a conclusion that the performance of the applicant was not satisfactory during the training period and he is not, therefore, a fit person to be retained in service in a disciplined force, <sup>4</sup>and cannot be faulted. If a new recruit does not improve his performance even during the training period inspite of warnings, action could be taken under Rule 5 of T.S. Rules to terminate the services of trainee under an order simpliciter. Otherwise, everything

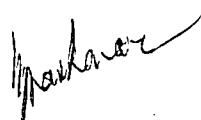
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could be <sup>de</sup>classified as a misconduct and no action can be taken under Rule 5 of T.S. Rules making the very rule redundant.

6. In the conspectus and circumstances of the case, we do not find any merit in the application and the application is rejected.

There will be no order as to costs.

  
(S. GURUSANKARAN)  
MEMBER (A)  
21.02.1992

  
(P.K. KARTHA)  
VICE CHAIRMAN (J)  
21.02.1992

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